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American Airlines, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**
14

15 HASIM A. MOHAMMED, on behalf of
16 himself, all others similarly situated

17 Plaintiff,

18 v.

19 AMERICAN AIRLINES, INC., a Corporation;
20 and DOES 1 through 50, inclusive,

21 Defendants.
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Case No. 19-cv-01540-EJD

**DEFENDANT AMERICAN AIRLINES,
INC.'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION**

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendant American Airlines, Inc. (“American”) hereby moves under Civil Local Rule 7-9(a) for leave to file a motion for reconsideration of the Court’s November 12, 2019 order granting Plaintiff Hasim A. Mohammed’s motion to remand (the “Order”). (Dkt. No. 22.) American respectfully seeks reconsideration of the Order under Civil Local Rule 7-9(b)(1) on the ground that the Ninth Circuit issued new controlling law after briefing on Plaintiff’s motion to remand concluded, but before this Court issued its Order.

American’s Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities and exhibits, the pleadings in this action, and such other materials and evidence as may be presented to the Court. Pursuant to Civil Local Rule 7-9(d), this Motion is not noticed for a hearing.

Dated: November 27, 2019

O’MELVENY & MYERS LLP
ADAM P. KOHSWEENEY
KRISTIN M. MACDONNELL

By: /s/ Adam P. KohSweeney
Adam P. KohSweeney
Attorneys for American Airlines, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Civil Local Rule 7-9, Defendant American Airlines, Inc. (“American”) seeks leave to file a motion for reconsideration of this Court’s November 12, 2019 order granting Plaintiff Hasim A. Mohammed’s motion to remand (Dkt. 22) (“Order”) in light of intervening new controlling authority from the Ninth Circuit, *Arias v. Residence Inn by Marriott*, 936 F.3d 920 (9th Cir. 2019), which clarifies a wage-and-hour defendant’s evidentiary burden when its removal calculations are challenged. Reconsideration is appropriate where, as here, “there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). By filing this motion fifteen days after the Order, American has also demonstrated “reasonable diligence in bringing the motion.” N.D. Cal. Civ. L.R. 7-9(b). Because *Arias*—which was published after the parties concluded their briefing on Plaintiff’s motion to remand but before this Court issued the Order—represents a “material difference in fact or law” and because American has satisfied all other requirements for bringing a motion for reconsideration under the Local Rules, this Court should grant American’s motion for leave to file a motion for reconsideration.

As a threshold matter, American has been diligent in seeking leave to file a motion for reconsideration. *See* N.D. Cal. Civ. L.R. 7-9(b). The Court issued the Order on November 12, 2019. American filed the instant motion fifteen days after the Court’s ruling.¹ This expedited timeline is well within the Court’s established time periods for reasonable diligence. *See, e.g., Barker v. Insight Global, LLC*, 2019 WL 176260, at *1 (N.D. Cal. 2019) (113 days); *Dytch v. Lazy Dog Restaurant, LLC*, 2018 WL 9412713, at *2 (N.D. Cal. 2018) (38 days); *True Health Chiropractic Inc. v. McKesson Corp.*, 2014 WL 6707594, at *1 n.2 (N.D. Cal. Nov. 25, 2014) (19 days). Thus, this Court should find that American has been reasonably diligent in bringing this motion.

¹ American also filed a Petition for Permission to Appeal pursuant to 28 U.S.C. § 1453(c) before the Ninth Circuit Court of Appeals on November 22, 2019.

1 *Arias* constitutes material new law published after the parties completed briefing. *See*
 2 N.D. Cal. Civ. L.R. 7-9(b)(1). *Arias* involved facts similar to those presented to this Court, and
 3 concluded that:

- 4 • A removing defendant in a wage-and-hour case may rely on reasonable assumptions
 5 regarding violation rates to prove CAFA's amount in controversy, and is not required to
 6 present evidence of the exact frequency of any wage-and-hour violations;
- 7 • A removing defendant's assumptions underlying its calculations, such as the number of
 8 employees, the average rate of pay, and the number of workweeks worked during the class
 9 period, must have some "reasonable ground underlying them"; and,
- 10 • "[W]hen a statute or contract provides for the recovery of attorneys' fees, prospective
 11 attorneys' fees *must* be included in the assessment of the amount in controversy."

12 *Arias*, 936 F.3d at 922 (internal quotations and citations omitted) (emphasis added).

13 Reconsideration is appropriate to give this Court an opportunity to evaluate the parties' arguments
 14 and evidentiary submissions in light of this new authority. *See, e.g., Fitch v. Shaw Indus., Inc.*,
 15 782 F. App'x 651 (9th Cir. 2019) (vacating district court's order granting remand and stating that
 16 evidentiary question is "controlled by [] recent decision in *Arias*").

17 American's proposed reconsideration motion thus does not ask the Court to "rethink what
 18 it has already thought," *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582
 19 (D. Ariz. 2003), but rather asks the Court to apply new, controlling law to previously-established
 20 facts. This is the precise situation in which this Court grants leave to file a motion for
 21 reconsideration. *See Farfan v. SSC Carmichael Operating Co. LP*, 2019 WL 4933577, at *1-2
 22 (N.D. Cal. Oct. 7, 2019) (granting leave to file motion for reconsideration based on new law
 23 following parties' presentation of arguments to court); *Federal Ins. Co. v. Albertson's Inc.*, 2007
 24 WL 2015042, at *1 (N.D. Cal. Jul. 6, 2007) (same). Accordingly, because *Arias* constitutes
 25 material new law, this Court should grant American's leave to file a motion for reconsideration.

26 For the reasons stated above, American requests that the Court grant it leave to file a
 27 motion for reconsideration of the Order granting Plaintiff's motion for remand. The proposed
 28

1 motion for reconsideration is attached hereto as **Exhibit 1**, and a proposed order for the motion
2 for reconsideration is attached hereto as **Exhibit 2**.

3
4 Dated: November 27, 2019

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6
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